

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Ms. Kavitha Rajagopal, Judicial Member

ITA No. 964/Coch/2022
(Assessment Year: 2019-20)

| | | |
|---|-----|---|
| Arunachalam Soyambunadar TC 41/562, Sindhu Nivas SGNRA 110-11, Kurithathy Mancaud, Trivanderum 695009 [PAN: CLKPS2333F] | vs. | Income Tax Officer (TDS) 3rd Floor, Aayakar Bhavan Kowdiar, Trivandrum 694003 |
| (Appellant) | | (Respondent) |

| | |
|----------------|-------------------------------|
| Appellant by: | Ms. Divya Ravindran, Advocate |
| Respondent by: | Smt. J.M. Jamuna Devi, Sr. DR |

| | |
|------------------------|------------|
| Date of Hearing: | 07.03.2024 |
| Date of Pronouncement: | 30.05.2024 |

ORDER

Per: Sanjay Arora, AM

This is an Appeal by Assessee directed against the order dated 21.09.2022 by the Commissioner of Income Tax (Appeals), Income Department [CIT(A)], dismissing the appeal agitating the assessment under section 206C of the Income Tax Act, 1961 ("the Act") for F.Y. 2018-19 (Assessment Year (AY) 2019-20) dated 28/2/2020.

2.1 The brief facts of the case leading to the instant appeal are that the assessee, a dealer in scrap, undertaking business under the trade name 'Anish Traders', was subject to survey u/s. 133A of the Act on 18.02.2020, whereby it was found that he had not collected tax at source from the buyers of the scrap. There had thus been a breach of s. 206C of the Act, which reads as under, obliging the seller to collect from the buyer, a sum, by way of tax, equal to one per cent. of the amount payable by the buyer at the time of debit thereto in his accounts or on receipt therefrom, whichever is earlier:

Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

206C. (1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

| S.No. | Nature of goods | Percentage |
|------------|-----------------|--------------|
| (1) | (2) | (3) |
| (i) to (v) | | |
| (vi) | Scrap | One per cent |

The same is to be deposited to the credit of the Central Government (s. 206C(3)), and which shall in that case be deemed to be the payment of tax of the person from whom the same stands collected (s. 206C(4)). In the event of a failure to do so, the seller or the person responsible for such payment shall, despite such failure, be liable to pay the sum to the credit of the Central Government, and deemed as in default on a failure to do so unless he exhibits that the corresponding sum has been taken into account in computing the income by the buyer and tax paid on the income declared (ss. 206C(6)/(6A)). The seller shall also be liable, in case of default, to pay interest at the prescribed rate from the date the tax was collectible to the date of its payment (s. 207C(7)). The ‘buyer’ is defined negatively to exclude entities such as Government; PSU; local authority; and the actual consumer. The ‘seller’ is defined positively to include an individual whose sales for the immediately preceding year exceeds Rs.150 lakhs. The assessee was, accordingly, deemed to be in default for Rs.5,68,537.

2.2 In appeal, the assessee contended that the items dealt with by him being old aluminum, steel, plastic and iron vessels, have not been generated in a manufacturing or mechanical process and, accordingly, cannot be regarded as a ‘waste’ or ‘scrap’. Also, the processing/recycling of these goods was not done by him, but sold by him as such to manufacturers, who in turn use it as raw material. In short, he is only a

dealer in scrap. The Id. CIT(A), with reference to the definition of 'scrap' under *Explanation (b)* to s. 206C, reading as under, found it to qualify as so:

Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

206C.

Explanation— For the purpose of this section,—

(a) ...

(b) "scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons;

The assessee was dealing in new (old) items. The same, he inferred, a result of some manufacturing or mechanical process, is now being sold as scrap, i.e., is not usable as such, but for being recycled in fresh process as a raw material. It was not necessary that the manufacture or mechanical process was carried by the assessee (seller) himself. He, accordingly, confirmed the assessment relying on the decision in *Pramod Kumar Jain v. ITO (TDS)* [2020] 117 taxmann.com 649 (Jpr-Trib), wherein it stands clarified that resale would not impart a different character to the subject matter of sale, which shall continue to be scrap, which in that case was procured from Railways, the producer of scrap. Aggrieved, assessee is in second appeal.

3. We have heard the parties, and perused the material on record.

3.1 The point in issue before us is if the goods sold by the assessee, a scrap dealer, fall under the definition of scrap under *Explanation (b)* below s. 206C of the Act. The assessee's case before us, relying on the decision in *Lala Bharat Lal & Sons v. ITO* (in ITA Nos. 14-16/LKW/2019, dated 19.02.2020), is that scrap, to qualify as so, should arise out of manufacturing activity. The Tribunal in turn relies on the orders by the Tribunal in other cases, as well as on *CIT vs. Priya Blue Industries* (in ITA No. ITA 604/2015 dated 03.11.2015) by the Hon'ble Gujarat High Court, reproducing there-from. Smt. Devi, the Sr. DR, would, on the other hand, rely on the orders by the

Revenue authorities, stating the same to be in conformity with the express provisions of law, even as found by the ld. CIT(A).

3.2 As regards the decision by the Hon'ble High Court, the same categorically states, at para 8 thereof, that as the impugned order by the Tribunal is based on findings of fact, it does not give rise to a question of law. The only opinion on a matter of law expressed by it, as we find, is at para 7 thereof, to the effect that the material not usable as such would fall within the ambit of scrap as envisaged under *Explanation (b)* to s. 206C of the Act. This follows, as stated by the Hon'ble High Court, from a plain reading of the statute. The aspect of the assessee being liable u/s.206C inasmuch as he is not a manufacturer, but a trader, is, to our mind, no longer *res integra* in view of the clear definition of a 'seller' therein, an aspect clarified by the Tribunal per it's larger Bench decision in *Bharati Auto Products vs. CIT* (ITA Nos. 391 & 392/Rjkt/2011, dated 06.09.2013), as noted by the Tribunal in *Lala Bharat Lal & Sons* (supra) at para 5. The assessee is, thus, clearly a 'seller' u/s. 206C. The liability to collect tax at source, fastened on a seller thereby, is with reference to the nature of the goods sold, i.e., scrap, irrespective of how the same came in his hands. One issue arising, therefore, is if the same, to qualify as one, is to be generated from a manufacturing or other mechanical process. Our unequivocal view, which is in agreement with that by the Tribunal per it's several decisions referred to in *Lala Bharat Lal & Sons* (supra), flow as it does from the clear definition of scrap, is that it must, to qualify as one, arise from a manufacturing or mechanical process. Though the Tribunal in *Lala Bharat Lal & Sons* (supra) further states that the assessee (seller) should also be a manufacturer, we find nothing to that effect either in the provision or in the orders by the Tribunal followed by it, and is, rather, inconsistent with the decision in *Bharti Auto Products* (supra), with we having also clarified the opinion as well as the ratio of the decision in *Priya Blue Industries*(supra), also relied upon by the Tribunal in other cases. There is no ambiguity in the terms 'scrap' and 'seller', which have to be independently satisfied for the invocation of the provision.

3.3 Coming to the facts of the case, we observe the assessee to have stated that the scrap dealt with by him is old aluminum, steel, plastic, and iron vessels. There is no finding in the matter by the Revenue authorities, both with regard thereto, as indeed the manner of its generation. The details placed on file do not bear the mandatory certificate of the same being before the Revenue authorities, to be taken as part of the Tribunal's record. Why, the invoices merely mention the nature of the commodity/item sold as iron scrap; steel scrap, aluminium scrap; plastic waste, and do not throw any light on the nature of the scrap or waste sold by the assessee as scrap.

4. The matter, accordingly, setting aside the impugned order, goes back to the file of the AO to, upon allowing the assessee a reasonable opportunity to exhibit the nature of the scrap, i.e., it arising from a manufacturing or mechanical working, not usable as such, or otherwise, resulting in the same being regarded as 'scrap' or, as the case may be, not so, within the meaning thereof u/s. 206C of the Act. The burden to prove is on the assessee, and the AO shall decide per a speaking order, issuing clear and definite finding/s of fact. We decide accordingly.

5. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced on May 30, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: May 30, 2024
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin